North Carolina Court of Appeals Upholds "Class" Distinction In Determining UIM Liability Apportionment

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On January 21, 2014, the North Carolina Court of Appeals handed down a new decision, *Nationwide Mutual Ins. Co. v. Integon Nat'l Ins. Co.*, affirming its somewhat controversial holding in *North Carolina Farm Bureau Mutual Ins. Co. v. Bost,* 126 N.C. App. 42, 483 S.E. 452 (1997) and holding that the "Class" of insured into which the claimant falls is a determinative factor in apportioning liability and credits among competing UIM policies.

The Court's "three step" analysis requires carriers and practitioners to first decide whether the competing policies' "Other Insurance" clauses are "mutually repugnant," meaning that they have identical terms or, if not identical terms, the same meaning. If those clauses are mutually repugnant, they are effectively stricken from the policies and given no effect.

When identical "Other Insurance" clauses are involved, carriers and practitioners must evaluate the "Class" into which the claimant falls for each of the UIM policies at issue. Case law interpreting North Carolina's underinsured motorist statute has established that "Class I" claimants are those who are "named insured[s] and, while resident of the same household, the spouse of any named insured and relatives of either, while in a motor vehicle or otherwise." "Class II" claimants are those who do not fall within Class I but who, nonetheless, qualify as insureds for the purpose of UIM coverage. If the claimant falls within the same "Class" for each policy at issue, the competing UIM carriers share liability and credits on a pro-rata basis.

If the claimant does not fall within the same "Class" under each of the UIM policies at issue, carriers and practitioners must revisit the policies' language, specifically evaluating, at least in the *Nationwide* decision, whether the vehicle in which the claimant was riding at the time of the accident was owned by the named insured or the named insured's spouse whose policy covered the vehicle. The "owned" versus "non-owned" distinction may require one or more policies to extend primary UIM coverage to the claimant while other policies will extend excess coverage. This "other insurance" clause analysis is looked at by the Court as a secondary analysis.

While the *Nationwide* decision was, according to the Court, intended to clarify decisions handed down subsequent to *Bost* suggesting that the "Class" determination was not relevant to the apportionment analysis, the decision may ultimately raise more questions than it answers. The decision does, however, appear to put the judicially created "Class" analysis ahead of plain policy language as the determinative factor in apportionment disputes unlike what other recent cases might seem to suggest.

As always, feel free to contact any of MGC's litigation attorneys with any questions you may have.

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